

1/26/04

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Oahu Sugar Company, LLC

Respondent

ADMINISTRATIVE ORDER ON CONSENT
FOR REMOVAL ACTION

U.S. EPA Region IX

CERCLA

Docket No. 2004-12

Proceeding Under Sections 104,
106(a), 107, and 122 of the
Comprehensive Environmental
Response, Compensation and
Liability Act, as amended, 42
U.S.C. Sections 9604, 9606(a), 9607, and
9622.

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency, Region IX ("US-EPA") and the Oahu Sugar Company, LLC (herein, "OSCO" or the "Respondent"). This Order provides for the performance of a Response Action, as defined herein and in Attachment A, which is an enforceable part of this Order, by Respondent in connection with the soil contamination located at the OSCO facility operation location on the Waipio Peninsula. Respondent is required by this Order to conduct the response action described herein and in Attachment A to abate an imminent and substantial endangerment to the public health, welfare or the environment.
2. This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), (42 U.S.C. Sections 9604, 9606(a), 9607, and 9622, respectively), and delegated to the Administrator of the United States Environmental Protection Agency by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the US-EPA Region Region IX Administrator and Superfund Branch Chiefs by US-EPA Delegation Nos. 14-14-A and 14-14-C. As such, this Order, and Attachments, embody a settlement between Respondent and the United States under the provisions of CERCLA.
3. EPA and Respondent recognizes that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agrees not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

1. This Order applies to and is binding on US-EPA, and on the Respondent, its successors and assigns. Any change in ownership or corporate status of the Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order. Each signatory to this Order certifies that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the party represented by him or her.
2. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in any attachments hereto and incorporated hereunder, the following definitions shall apply:

“Administrative Order on Consent,” “AOC” or “Order” shall mean this Administrative Order on Consent for Removal Action, US-EPA Docket No. 2004-12, and all attachments hereto.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq.

“Contractor” shall mean Respondent’s contractors and subcontractors performing the installation/construction, and operation and maintenance activities relating to any of the specific actions at the OSCO Site, which Respondent is required to perform.

“Day” shall mean a calendar day unless expressly stated to be a Business Day. “Business Day(s)” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Business Day.

“Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, as provided by 42 U.S.C. §9607(a).

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, codified at 40 C.F.R. Part 300.

“OSCO Site” shall mean the OSCO Removal Site, which is located on the Pearl Harbor Naval Complex, currently listed on the National Priorities List, located at Department of Navy, Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, Hawaii, 96860-3134. **[Lewis, geographically describe where the OSCO Site is located within the overall Pearl Harbor Site.]**

“Oversight Costs” shall mean all past, present and future costs, including, but not limited to, direct and indirect costs and interest incurred or paid by the United States, its employees, agents, contractors, consultants, and other authorized representatives, with regard to the OSCO Site.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral, unless otherwise indicated herein.

“Parties” shall mean US-EPA and OSCO.

“Pearl Harbor Superfund Site” shall mean the areal extent of contamination surrounding the Pearl Harbor Naval Complex, located at Department of Navy, Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, Hawaii, 96860-3134.

“Respondent” shall mean OSCO and all successors and assigns..

“Response Action” shall be those specific work items Respondent is required to perform pursuant to this Order, as set forth in Section VII and Attachment A of this Order.

“Section” shall mean a portion of this Order identified by a Roman numeral and may include one or more paragraphs, unless otherwise stated herein.

“State” shall mean the State of Hawaii, and all of its political subdivisions, including the Hawaii Department of Health (“DOH”).

“United States” shall mean the United States of America.

“United States Department of the Navy” shall mean the United States Department of the Navy (the “Navy”).

“United States Department of Defense” shall mean the United States Department of Defense (“DOD”).

“US-EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

IV. FINDINGS OF FACT

1. The Oahu Sugar Company (“OSCO”) site occupies approximately 3.5 acres on the Waipio Peninsula near Waipahu, Oahu, Hawaii. The site is a former pesticide mixing plant. OSCO leased the land from the Navy to grow sugarcane. OSCO ceased operations at the Waipio Peninsula site in the 1980's. The OSCO Site is located on the Pearl Harbor Superfund Site.
2. The 3.5 acres are adjacent to Walker Bay. An approximately 15- foot high cliff runs across the site in approximately north-south direction. A number of aboveground storage tanks (ASTs) were located long the top of the cliff. An airstrip, quonset hut and a

number of ASTs were formerly located in the lower area of the site where pesticides were stored, mixed and loaded on crop dusting aircraft.

3. On May 20, 1997, the Hawaii Department of Health ("DOH") conducted surface soil sampling at the site. The sampling results from the DOH effort indicated the high concentrations of various dioxin congeners at the Site, which include pentachlorophenol and dioxin contamination as high as 1,530 parts per billion (ppb) for 2,3,7,8-tetrachlorodibenzo-para-dioxin (2,3,7,8 TCDD) toxicity equivalents.
4. **Lewis, insert US-EPA or Navy data that describes the contaminated conditions at the site and provides support for conducting a removal action.**
5. In August 2002, OSCO conducted a remedial investigation and prepared a remedial investigation report for the former pesticide mixing plant, on the Waipio Peninsula, Waipahu Hawaii. BEI Environmental Services prepared the report on behalf of OSCO. **[Lewis, what does it say? Does it also confirm the presence of soil contamination? I would like a copy of this report.]**
6. In September 2003, US-EPA sent a letter to OSCO and the Navy (the "Navy") requesting that OSCO and/or the Navy take action to abate dangers posed by the contamination at the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

1. Based on the Findings of Fact set forth above, and the Administrative Record supporting this action, US-EPA has made the following conclusions of law and determinations:
2. The OSCO Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
3. The contaminants found at the OSCO Site, as identified in Section IV of this Order, "Findings of Fact," include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
4. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21), and Section 1004(15) of RCRA, 42 U.S.C. §6903(15).
5. Respondent is an operator of the facility, and is liable at the OSCO Site under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).
6. The conditions that existed at the OSCO Site, as described in Section IV of this Order ("Findings of Fact"), constituted an actual or threatened "release" of a hazardous

substance from the facility as defined by Section 101(22) of CERCLA 42 U.S.C. §9601(22).

7. The actual or threatened release of hazardous substances from the OSCO Site presented an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a), which included, but was not limited to the following:
 - a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; dioxin is a persistent, bioaccumulative and toxic pollutant that can build up in the food chain to levels harmful to human and ecosystem health, and
 - b. hazardous substances, pollutants or contaminants in soils pose a threat of release.
8. The conditions at the OSCO Site constitute an imminent and substantial threat to public health, welfare, or the environment based on a consideration of the factors set forth in the NCP at 40 C.F.R. §300.415(b) and this Order are necessary to protect the public health, welfare, or the environment.
9. Prompt settlement with Respondent is practicable and in the public interest as may be required within the meaning of Section 122(a) of CERCLA, 42 U.S.C. §9622(a).
10. The actions required by this Order, if properly performed, will be deemed consistent with the NCP, and are appropriate to protect the public health, welfare, or the environment.

VI. NOTICE TO THE STATE

1. US-EPA has notified the State of Hawaii of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a) by providing the Department of Health a copy of this Order.

VII. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law and Determinations, and the Administrative Record for this action, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to any attachments to this Order, and all documents incorporated by reference into this Order. Respondent, either itself or by retaining a contractor as set forth in this Order, shall complete the Response Action as provided for in this Order, and perform the following actions:

1. Designation of Project Coordinator and On-Scene Coordinator

- a. Respondent shall designate a Project Coordinator who shall be responsible for overseeing Respondent's implementation of this Order. To the greatest extent possible, during work at the OSCO Site the Project Coordinator shall be present or readily available. Receipt by Respondent's Project Coordinator of any notice or communication from US-EPA relating to this Order shall constitute receipt by Respondent.
- b. US-EPA designates Lewis Mitani, an employee of Region IX of US-EPA, as its primary Remedial Project Manager ("RPM") and representative for the Response Action to be performed by this Order, who shall have the authorities, duties, and responsibilities vested in the RPM by the NCP. Respondent shall direct all submissions required by this Order to the RPM at US-EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105.
- c. Consistent with the provisions of this Order, US-EPA designates John Chesnutt as an alternate RPM, in the event the designated RPM, Lewis Mitani, is not present, and has expressly delegated duties or responsibilities to the alternate RPM, or is otherwise unavailable. The alternate RPM shall have the authority, duties and responsibilities vested in the RPM when acting in the stead of the primary RPM. Nothing in this Order shall limit the authority of the US-EPA RPM under federal law.
- d. US-EPA and Respondent may change their respective primary and alternative RPM and Project Coordinator. Notification of such change shall be made by notifying the other Party in writing at least five (5) days prior to such change, except in case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.
- e. For purposes of this Order, US-EPA's authorized representatives shall include, but not be limited to, any consultants and contractors hired by US-EPA to oversee activities required by this Order.

2. General Provisions

- a. All work required by this Order shall be conducted in accordance with: CERCLA; the NCP; US-EPA Region IX "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (US-EPA, November 1992); any final amended or superseding versions of such documents provided by US-EPA; other applicable US-EPA guidance documents; and any report, document or deliverable approved by US-EPA or prepared by US-EPA because Respondent failed to comply with this Order.
- b. All plans, schedules, and other reports that require US-EPA's approval and are required to be submitted by the Respondent pursuant to this Order shall, on approval by US-EPA, be incorporated into and become enforceable under this Order.

- c. US-EPA will oversee Respondent's activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1). Respondent will support US-EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondent also shall cooperate and coordinate the performance of all work required to be performed under this Order with any other work being performed at the OSCO Site, including work performed by US-EPA, the Navy, the State, or any other party performing work with the approval of US-EPA.
- d. Respondent shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from any such requirement is specifically provided under CERCLA or unless the Respondent obtains a variance or exemption from the appropriate governmental authority.
- e. All work performed by or on behalf of Respondent pursuant to this Order shall be performed by qualified individuals or Contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by US-EPA. Respondent shall notify US-EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for preparing and implementing the Workplan as required pursuant to the terms of this Order. Respondent also shall notify US-EPA in writing of the name, title and qualifications of any Contractor(s) or subcontractor(s) at least ten (10) business days prior to such new entities' commencement of work. The Contractors and subcontractors undertaking the work for Respondent shall be subject to US-EPA review and approval.
- f. If US-EPA disapproves of any person's or contractor's technical or work-experience qualifications, US-EPA will notify the Respondent in writing. Respondent shall, within five (5) working days of Respondent's receipt of US-EPA's written notice, notify US-EPA of the identity and qualifications of the replacement(s). Should US-EPA disapprove of the proposed replacement(s), Respondent shall be deemed to have failed to comply with the Order.
- g. Respondent may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondent wishes to propose such a change, the Respondent shall notify US-EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by US-EPA in accordance with the terms set forth above. The naming of any replacement(s) by Respondent shall not extend any deadlines required by this Order nor relieve the Respondent of any obligation to perform the work required by this Order.
- h. Respondent will notify US-EPA of any field activities at least one week before initiating them so that US-EPA may adequately schedule oversight tasks.

- i. At least seven (7) days prior to commencing any work at the OSCO Site pursuant to this Order, Respondent shall submit to US-EPA a certification that Respondent or its contractor(s) and subcontractor(s) have adequate insurance coverage, proof of ability to self-insure, or have indemnification for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondent shall ensure that the United States is named as an insured on any such insurance policies.
- j. Beginning from the implementation of the Work Plan at the OSCO Site, Respondent shall maintain reasonable security at the OSCO Site that meets with US-EPA approval. This requirement shall terminate when terminated in writing by US-EPA.

3. Work to Be Performed

The Respondent shall perform the following tasks, which shall constitute the Response Action under this Order:

- a. Respondent shall perform the work and make submittals and certifications as set forth below and in Attachment A within the time schedules specified in this Section and in Attachment A. Attachment A is an enforceable part of this Order.
- b. Respondent shall submit monthly progress reports ("Progress Reports") to US-EPA. The first such Progress Report shall be due by the fifteenth (15th) day following the end of the first calendar month after the Effective Date (Section XXIV) of this Order, and by the 15th day of each month thereafter until US-EPA notifies Respondent that the Response Action is complete.
- c. Within __ days after the Effective Date, Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.
- d. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate,

“Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. **[NOTE: Regions should also check with Regional QA officers for standard operating procedures for QA/QC and sampling of soil, air, ecology, waste and water.]** Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001),” or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

1. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

2. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than ___ days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent’s implementation of the Work.

e. Except as otherwise stated in this Order, and within US-EPA’s sole discretion, any noncompliance with the actions to be performed or the schedules set forth within or approved pursuant to this Order may be considered a violation of this Order.

- 1) Within thirty (30) days after completion of all actions required under this Order, the Respondent shall submit for US-EPA review and approval a Final Report summarizing the actions taken to comply with this Order. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP. The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with this Order, a listing of quantities and types of materials removed off-site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated (e.g., manifests, invoices, bills, contracts, and permits). In addition, the Respondent shall certify, through its contractors,

that the Final Report is complete and accurate to the best of their collective knowledge.

4. Effect of Noncompliance with Work Performance and Schedule

- a. Except as otherwise stated in this Order, any noncompliance with the actions to be performed or the schedules established as set forth within Section VII and Attachment A shall be considered a violation of this Order.

5. Notices and Submissions

- a. All documents, including technical reports, and other correspondence to be submitted by the Respondent pursuant to requirements of this Order, shall be sent by overnight mail pursuant to Section XXV of this Order, "Provision of Notice," and shall be deemed submitted on the date received by US-EPA. Respondent shall submit two (2) copies of each document to US-EPA, (2) copies to the Navy, and two (2) copies to DOH. Copies to DOH and the Navy shall be delivered via first class U.S. mail.

6. Approval of Submissions

- a. US-EPA shall review, comment on, and approve or disapprove each plan, report, or other deliverable submitted by Respondent pursuant to the requirements of this Order. US-EPA comments on draft deliverables shall be addressed by the Respondent. US-EPA shall notify the Respondent in writing of US-EPA's approval or disapproval of a final deliverable. In the event of any disapproval, US-EPA shall specify the reasons for such disapproval, US-EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by US-EPA, US-EPA shall first notify the Respondent of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, or may conduct the remaining work required by this Order.

7. Access to Property and Information

- a. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by the Respondent, the Respondent shall, commencing on the Effective Date, provide EPA the State, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.
- b. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use their best efforts to obtain all necessary access agreements within __ days after the Effective Date, or as otherwise specified in writing by the RPM. Respondent shall immediately notify EPA if after using

their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing their efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section IX (Reimbursement of Oversight Costs).

- c. Notwithstanding any provision of this Order, EPA retain[s] all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.
- d. Respondent shall provide to EPA upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
- e. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.
- f. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

- g. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

8. Record Retention, Documentation, Availability of Information

- a. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXI (Notice of Completion) each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXI (Notice of Completion), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.
- b. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.
- c. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. §6927.

9. Off-Site Shipments

- a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of

Waste Material to the appropriate state environmental official in the receiving facility's state and to the RPM. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

- 1) Respondent shall include in the written notification the following information: the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
 - 2) The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 9(a) and 9(b) of this Section as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
- b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

10. Compliance with Other Laws

- a. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to EPA approval.

11. Emergency Response and Notification of Releases

- a. If any incident or change in site conditions occurs during the actions conducted pursuant to this Order, which causes or threatens to cause an additional release of hazardous substances from the OSCO Site or an endangerment to the public health, welfare, or the

environment, Respondent shall immediately take all appropriate action in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan. Respondent also shall immediately notify the RPM or, in the event of his unavailability, shall notify the alternate RPM designated in this Order. If neither the RPM nor alternate RPM is available, Respondent shall notify the US-EPA Region IX Emergency Response Unit of the incident or site conditions, by telephone at **(415) XXX XXXX**

- b. If Respondent fails to respond, US-EPA may respond to the release or endangerment, and Respondent shall reimburse US-EPA for all costs and attorneys' fees incurred responding to the threat or endangerment.
- c. In addition, in the event of any release of a hazardous substance from the OSCO Site, Respondent shall immediately notify US-EPA, Region IX at telephone number **(415) XXX XXXX** and the National Response Center at telephone number **[(800) 424-8802 [Lewis, make sure this telephone number is still valid]]**. Respondent shall submit a written report to US-EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the recurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103© and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11001 et seq.

12. Notification of Unanticipated or Changed Circumstances

- a. In the event of unanticipated or changed circumstances at the OSCO Site, Respondent shall notify the US-EPA RPM by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than three (3) days of discovery of the unanticipated or changed circumstances.
- b. The RPM may determine that, in addition to tasks addressed in an approved work plan or otherwise addressed herein, additional work may be required to address the unanticipated or changed circumstances that, if unaddressed, will result in an actual or threatened endangerment to health or the environment. Respondent shall implement such additional work that the RPM identifies if such work is directly related to the OSCO Site or any releases therefrom. Respondent shall complete the additional work according to the standards, specifications, and schedules that the RPM determines will remove the endangerment.

13. NCP Compliance

- a. All work Respondent properly performs to comply with this Order shall be consistent with the National Contingency Plan.

VIII. AUTHORITY OF THE US-EPA REMEDIAL PROJECT MANAGER

1. US-EPA's RPM shall be responsible for overseeing Respondent's implementation of this Order. The RPM shall have the authority vested in an On Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any work required by this Order. Absence of the RPM from the OSCO Site shall not be cause for stoppage of work unless specifically directed by the RPM.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

1. Respondent shall reimburse US-EPA for all oversight Costs. Respondent shall make full payment by certified check(s) within thirty (30) days of the date in which US-EPA sends Respondent a letter of demand for the payment of oversight costs. The payment check(s) shall reference the OSCO Removal Action, Site #XXXX [Lewis, insert the site number] and shall be payable as follows: [Lewis, double check the address]

Hazardous Substance Superfund
U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

2. In the event that the payment required by this Section IX ("Reimbursement of Oversight Costs") is not made when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

X. DISPUTE RESOLUTION

1. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.
2. If Respondent objects to any US-EPA action taken pursuant to this Order, including billings for Oversight Costs, they shall notify in writing of their objection(s) within __ days of such action, unless the objection(s) has/have been resolved informally. US-EPA and Respondent shall have __ days from US-EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of US-EPA.

3. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an US-EPA management official at the Superfund Division Branch Chief level or higher will issue a written decision on the dispute to Respondent. US-EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with US-EPA's decision, whichever occurs.

XI. FORCE MAJEURE

1. Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.
2. Respondent shall notify US-EPA orally within twenty-four (24) hours after an event that may cause a delay, whether or not caused by a force majeure event, and in writing within five (5) Business Days after Respondent becomes or should have become aware of events that may constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and remobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondent.
3. If US-EPA agrees that a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended by written agreement between US-EPA and Respondent.
4. An extension of the time for performance of the requirement directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent requirement.
5. If US-EPA does not agree that the delay in performance of a requirement under this Order is or was attributable to a force majeure, or does not agree with Respondent on the

length of the extension, the issue shall be subject to the dispute resolution procedures set forth in this Order.

XII. RESERVATION OF RIGHTS

1. Except as specifically provided in this Order, nothing herein shall limit the power and authority of US-EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the OSCO Site. Further, nothing herein shall prevent US-EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary and not inconsistent with the covenant not to sue set forth in Section XV of this Order, or from requiring the Respondent in the future to perform or pay for additional activities pursuant to CERCLA or any other applicable law, or for liability for costs not included within the definition of Oversight Costs. In addition to any rights retained in this Section or Section XIV, "Other Claims," EPA reserves, and this Order is without prejudice to all rights against Respondent with respect to criminal liability and liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.
2. This Order expressly does not address, include, or otherwise affect the liability of Respondent arising out of property conditions at the Site unknown at the time of completion of the removal action to be performed pursuant to this Order.

XIII. STIPULATED AND STATUTORY PENALTIES

1. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth below in Paragraphs 2 and 3 for failure to comply with the requirements of this Order specified below, unless excused under Section XI (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order, including Attachment A.
2. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 2(b) and Attachment A:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ _____	1st through 14th day
\$ _____	15th through 30th day
\$ _____	31st day and beyond

b. Compliance Milestones

[List violations or compliance milestones, including due dates for payments]

3. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to this Order and Attachment A :

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ _____	1st through 14th day
\$ _____	15th through 30th day
\$ _____	31st day and beyond

4. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VII.3 (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Superfund Division Branch Chief level or higher, under Paragraph 3 of Section X (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.
5. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.
6. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invoke the dispute resolution procedures under Section X (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to [insert the Regional Lockbox number and address], shall indicate that the payment is for stipulated penalties, and shall reference the **EPA Region and Site/Spill**

ID Number _____, the EPA Docket Number _____, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Section XXV (Provision of Notice).

7. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.
8. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.
9. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 6. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIV. OTHER CLAIMS/RESPONDENT'S COVENANT NOT TO SUE

1. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Oversight Costs, or this Order, including, but not limited to:
 - a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
 - b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

2. Except as provided in Paragraph 4 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XV (Reservation of Rights) but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.
3. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
4. Respondent agrees not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site.
5. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such Respondent.

XV. US-EPA COVENANT NOT TO SUE

1. In consideration of the actions that will be performed and the payment including reimbursement of oversight costs and receipt of all amounts required under Section XIII (Stipulated Penalties) that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Order. This covenant not to sue extends only to Respondent and does not extend to any other person.

XVI. CONTRIBUTION PROTECTION

1. Except as expressly set forth herein, nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Order. With regard to claims for contribution against Respondent, with respect to the OSCO Site, for

matters addressed in this Order, the Parties hereto agree that Respondent is entitled to protection from contribution actions or claims, including any such claims by any persons not Parties to this Order, relating to the matters addressed in this Order to the maximum extent provided by Section 113(f), and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f), and 9622(h)(4).

2. Nothing in this Order precludes US-EPA or Respondent from asserting any claims, causes of action or demands against any persons not Parties to this Order for indemnification, contribution, or cost recovery.

XVII. INDEMNIFICATION

1. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.
2. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.
3. Respondent waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XVIII. INSURANCE

1. At least seven (7) days prior to commencing any on-Site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of **[amount]** million dollars, combined single limit. Within the same time period, Respondent shall provide US-EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrate by evidence satisfactory to that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XIX. FINANCIAL ASSURANCE

1. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security in the amount of \$ **[insert estimated cost of Work]** in one or more of the following forms:
 - a. A surety bond guaranteeing performance of the Work;
 - b. One or more irrevocable letters of credit equaling the total estimated cost of the work;
 - c. A trust fund;
 - d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondent; or
 - e. A demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).
2. If Respondent seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 1(a) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondent seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 1(d) or (e) of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that US-EPA determines

at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of notice of US-EPA's determination, obtain and present to US-EPA for approval one of the other forms of financial assurance listed in Paragraph 1 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

3. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 1 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to US-EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by US-EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.
4. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by US-EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XX. MODIFICATIONS

1. The RPM may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by US-EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.
2. If Respondent seek permission to deviate from any approved work plan or schedule Respondent's Project Coordinator shall submit a written request to US-EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 1 of this Section.
3. No informal advice, guidance, suggestion, or comment by the RPM or other US-EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXI. ADDITIONAL REMOVAL ACTION

1. If US-EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, US-EPA will notify Respondent of that determination. Unless otherwise stated by US-EPA, within 30 days of receipt of notice from US-EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by US-EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VII (Work to Be Performed) and Attachment A of this Order. Upon US-EPA's approval of the plan pursuant to Section VII and Attachment A, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XX (Modifications).]

XXII. NOTICE OF COMPLETION

1. When US-EPA determines, after US-EPA's review of the Final Report, described in Section VII, Paragraph 3(c)(1) of this Order, that the Response Action has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, US-EPA will provide written notice to the Respondent of such determination. If US-EPA determines that the Response Action has not been completed in accordance with this Order, US-EPA will notify the Respondent in writing, provide a list of the deficiencies, and require that Respondent correct such deficiencies. Respondent shall correct such deficiencies and shall submit a modified Final Report in accordance with US-EPA's notice. Failure by Respondent to correct the identified deficiencies shall be a violation of this Order.

XXIII. SEVERABILITY

1. If a court issues an order that invalidates any provision of this Order, or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, the Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order. If a court invalidates either the covenant not to sue or the contribution protection provisions of this Order, OSCO and US-EPA agree to negotiate in good faith an amendment to this Order that implements the covenant not to sue and the contribution protection provisions in a manner that complies with the court's order.

XXIV. EFFECTIVE DATE

1. This Order shall be effective five (5) days after the Order is signed by the Branch Chief of Superfund Division or his designee (the "Effective Date").

XXV. PROVISION OF NOTICE

1. Any written notice required to be given pursuant to this Order shall be sent via overnight mail. Such notice shall be given as follows:

As to US-EPA:

Lewis Mitani
Remedial Project Manager
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
Telephone: (415)972-XXX

As to Respondent:

Copy via 1st Class Mail to:

**DOH and the Navy [Lewis, Please insert
contact name and addresses]**

2. Any oral notice required to be given pursuant to this Order may be given to the respective Parties using the telephone numbers referenced above. Any Party may change its address for notice purposes by sending a notice of address change to the other Parties.

XXVI. EXECUTION IN COUNTERPARTS

1. This Order may be executed in any number of counterparts, each of which when executed and delivered to US-EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document. The Parties agree that proof of execution can be made by a Party providing a facsimile copy of an original signature.

It is so ORDERED and Agreed this _____ day of _____, 2004.

By: _____

Branch Chief of Superfund Division
Region IX
United States Environmental Protection Agency

US-EPA Legal Contact:

Jeannie Cervera
Assistant Regional Counsel
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94104
(415) 972-3949
cervera.jeannie@epa.gov

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Order **[Lewis insert docket number]** and to bind the party that he/she represents to this document.

Agreed this _____ day of _____, 2003.

By _____

Title _____

For _____
"Respondent"

OSCO Legal Contact:

*** ENFORCEMENT CONFIDENTIAL ***

*** DO NOT RELEASE ***

311(j) MINIMUM (BLS) PENALTY WORKSHEET

SUN COMPANY

ROCHESTER, NEW YORK

PRELIMINARY GRAVITY CALCULATION		Data	Penalty Adjustment (Percent)	Penalty Adjustment (Value)	Sub Totals
Step 1 - SERIOUSNESS	Facility Oil Storage Capacity (gallons):				
	Noncompliance category:				
	Matrix value:	0		\$0	\$0
	Potential Environmental Impact:				
	Adjustment:		0.0%	\$0	\$0
	Duration (months):		0.0%	\$0	\$0
	TOTAL: SERIOUSNESS COMPONENT				\$0
Step 2 - CULPABILITY	Culpability:		0%	\$0	\$0
Step 3 - MITIGATION	Mitigation:	0	0.0%	\$0	\$0
Step 4 - VIOLATION HISTORY	History of Violations:	0	0.0%	\$0	\$0
	TOTAL: PRELIMINARY GRAVITY				\$0
ADJUSTMENTS TO GRAVITY	Other Penalty for Same Incident:	0		\$0	\$0
	Other Matters as Justice May Require:	0		\$0	\$0
	Economic Impact on Violator:	0		\$0	\$0
	TOTAL: ADJUSTMENTS TO GRAVITY				\$0
TOTAL GRAVITY:					\$0
OTHER ADJUSTMENTS	Economic Benefit:				\$0
	Adjustment for Gross Negligence/Willful Misconduct:	0		0	\$0
	Other Settlement Reductions:	0		0	\$0
	TOTAL PENALTY:				\$0

Michael Hodanish September 17, 1999